

KAPLAN HECKER & FINK LLP

350 FIFTH AVENUE | 63RD FLOOR
NEW YORK, NEW YORK 10118
TEL (212) 763-0883 | FAX (212) 564-0883
WWW.KAPLANHECKER.COM

DIRECT DIAL (212) 763-0883
DIRECT EMAIL rkaplan@kaplanhecker.com

November 5, 2021

BY ECF

The Honorable Norman K. Moon
The Honorable Joel C. Hoppe
United States District Court
Western District of Virginia
255 West Main Street
Charlottesville, VA 22902

Re: *Sines et al. v. Kessler et al.*, No. 3:17-cv-00072 (NKM) (JCH)

Dear Judges Moon and Hoppe:

We write in response to the letter from Joshua Smith, of yesterday's date. ECF No. 1395. In that letter, Mr. Smith accuses us of failing to negotiate in good faith in violation of Magistrate Judge Hoppe's order dated July 9, 2021 requiring the parties to discuss settlement (the "July 2021 Order"). ECF No. 989. As discussed below, Mr. Smith's accusation not only lacks merit, but borders on frivolous.

The sole basis for Mr. Smith's argument is a comment that I am reported to have made during a recruiting interview with my co-counsel, Michael Bloch, sometime in 2018 before Mr. Bloch started working at our law firm in December 2018. That statement provides no support for the accusation that we disobeyed the Court's July 2021 Order for a simple reason: the statement identified by Mr. Smith was made in 2018—*three years before* Magistrate Judge Hoppe issued the July 2021 Order. *See* ECF No. 989. Any statement that I made to recruit Mr. Bloch to come work at our law firm obviously has no bearing on Plaintiffs' compliance with the July 2021 Order three years later.

To be clear, however, Plaintiffs and their counsel did fully comply with the Court's July 2021 Order by engaging in settlement discussions with Defendants in good faith. Not only did we participate in good faith in the day-long conference before Magistrate Judge Hoppe on August 20, 2021, ECF No. 1023, but we also have had good-faith discussions whenever counsel for any Defendant (including Mr. Smith) has approached us to discuss settlement throughout the course of this matter. While I obviously cannot get into the substance of any such discussions, *see, e.g.*, Fed.

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R. Evid. 408; ECF No. 989 ¶ 5, I can say that to date, no Defendant in this case has been willing to meet our conditions for settling this case.

Given the above, the Court should deny Mr. Smith's baseless request for sanctions. Mr. Smith should further be cautioned that "the filing of a frivolous motion for sanctions is *itself* sanctionable conduct." *Scott v. Lori*, No. 19-cv-2014, 2020 WL 906351, at *2 (D. Md. Feb. 24, 2020) (emphasis added); *see also Sokos v. Hilton Hotels Corp.*, 283 F. Supp. 2d 42, 54-56 (D.D.C. 2003) (imposing sanctions on party for bringing a frivolous motion for sanctions).

Respectfully submitted,



Roberta A. Kaplan
Counsel for Plaintiffs

KAPLAN HECKER & FINK LLP

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Of Counsel:

Roberta A. Kaplan (*pro hac vice*)
Michael L. Bloch (*pro hac vice*)
Raymond P. Tolentino (*pro hac vice*)
Yotam Barkai (*pro hac vice*)
Alexandra K. Conlon (*pro hac vice*)
Jonathan Kay (*pro hac vice*)
KAPLAN HECKER & FINK LLP
350 Fifth Avenue, Suite 7110
New York, NY 10118
Telephone: (212) 763-0883
rkaplan@kaplanhecker.com
mbloch@kaplanhecker.com
rtolentino@kaplanhecker.com
ybarkai@kaplanhecker.com
aconlon@kaplanhecker.com
jkay@kaplanhecker.com
Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
rcahill@cooley.com

David E. Mills (*pro hac vice*)
Joshua M. Siegel (VSB 73416)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Fax: (202) 842-7899
dmills@cooley.com
jsiegel@cooley.com

Karen L. Dunn (*pro hac vice*)
Jessica Phillips (*pro hac vice*)
William A. Isaacson (*pro hac vice*)
Giovanni Sanchez (*pro hac vice*)
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
2001 K Street, NW
Washington, DC 20006-1047
Telephone: (202) 223-7300
Fax: (202) 223-7420
kdunn@paulweiss.com
jphillips@paulweiss.com
wisaacson@paulweiss.com
gsanchez@paulweiss.com

Alan Levine (*pro hac vice*)
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Telephone: (212) 479-6260
Fax: (212) 479-6275
alevine@cooley.com

J. Benjamin Rottenborn (VSB 84796)
WOODS ROGERS PLC
10 South Jefferson St., Suite 1400
Roanoke, VA 24011
Telephone: (540) 983-7600
Fax: (540) 983-7711
brottenborn@woodsrogers.com

Counsel for Plaintiffs

KAPLAN HECKER & FINK LLP

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2021, I served the following via electronic mail:

Elmer Woodard
5661 US Hwy 29
Blairs, VA 24527
isuecrooks@comcast.net

James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
jek318@gmail.com

Counsel for Defendants Jason Kessler, Nathan Damigo, and Identity Europa, Inc. (Identity Evropa)

Bryan Jones
106 W. South St., Suite 211
Charlottesville, VA 22902
bryan@bjoneslegal.com

Counsel for Defendants Michael Hill, Michael Tubbs, and League of the South

Joshua Smith
Smith LLC
807 Crane Avenue
Pittsburgh, PA 15216-2079
joshsmith2020@gmail.com

Counsel for Defendants Matthew Parrott, Traditionalist Worker Party and Matthew Heimbach

David L. Campbell
Justin Saunders Gravatt
Duane, Hauck, Davis & Gravatt, P.C.
100 West Franklin Street, Suite 100
Richmond, VA 23220
dcampbell@dhdglaw.com
jgravatt@dhdglaw.com

Counsel for Defendant James A. Fields, Jr.

William Edward ReBrook, IV
The ReBrook Law Office
6013 Clerkenwell Court
Burke, VA 22015
edward@rebrooklaw.com

Counsel for Defendants Jeff Schoep, National Socialist Movement, Nationalist Front, Matthew Parrott, Traditionalist Worker Party and Matthew Heimbach

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I hereby certify that on November 5, 2021, I also served the following via mail and electronic mail:

Richard Spencer
richardbspencer@icloud.com
richardbspencer@gmail.com

Christopher Cantwell

Christopher Cantwell 00991-509
Central Virginia Regional Jail
13021 James Madison Hwy
Orange, VA 22960

Vanguard America
c/o Dillon Hopper
dillon_hopper@protonmail.com

Robert "Azzmador" Ray
azzmador@gmail.com

Elliott Kline a/k/a Eli Mosley
eli.f.mosley@gmail.com
deplorabletruth@gmail.com
eli.r.kline@gmail.com



Roberta A. Kaplan (*pro hac vice*)
KAPLAN HECKER & FINK LLP

Counsel for Plaintiffs